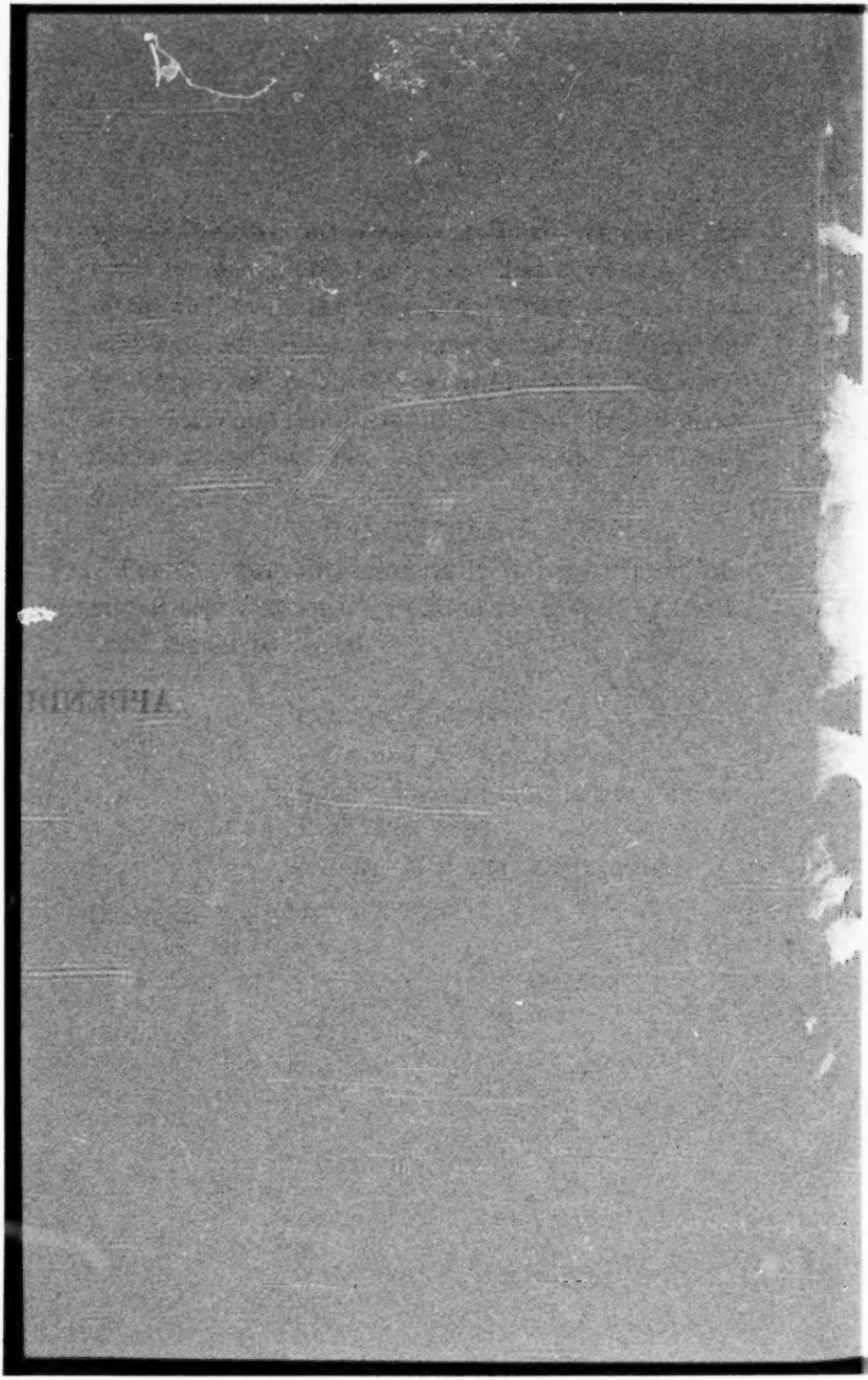

APPENDIX "A"

MOTION FOR PARTIAL SUMMARY JUDGMENT

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF CASCADE

* * *

DONALD R. McGEE, Plaintiff, vs. BURLINGTON NORTHERN INC., a corporation, Defendant.	NO. 75920 C MOTION FOR PARTIAL SUMMARY JUDGMENT

* * *

The plaintiff, Donald R. McGee hereby moves the Court to enter partial summary judgment for the plaintiff in accordance with the provisions of Rule 56 of the Montana Rules of Civil Procedure on the grounds that the pleadings, interrogations and depositions on file herein show that the plaintiff, Donald R. McGee is entitled to a judgment on liability and proximate cause as a matter of law leaving only the

remaining question of damages to be tried by the jury.

DATED this 4h day of October, 1973.

HOYT, BOTTOMLY & GABRIEL
By s/John C. Hoyt
Attorneyes for Plaintiff
320 First Avenue North
Great Falls, Montana

APPENDIX "B"

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF MONANA, IN AND FOR THE COUNTY OF CASCADE

* * *

DONALD R. McGEE,	)	
	)	
Plaintiff,	)	NO. 75920 C
	)	
vs.	)	
	)	
BURLINGTON NORTHERN INC., a corporation	)	ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT
Defendant.	)	

* * *

The above entitled cause came before the Court on Plaintiff's Motion for Partial Summary Judgment on the issue of liability only.

The motion was briefed by both parties and in addition the court heard oral argument by plaintiff and defendant;

The depositions of all of the witnesses to the event have been taken, filed and read by the Court, together with interrogatories and answers thereto propounded by both parties.

The facts necessary to the determination of this motion are as follows:

Plaintiff was employed by defendant as a conductor-brakeman and was injured on November 4, 1971 while engaged in a switching operation for defendant in the course of his employment therewith and brought this action claiming that the defendant was liable under the Federal Employers' Liability Act, 45 U.S.C. 51 et seq. and in addition claimed a violation of the Federal Safety Appliance Aot, 45 U.S.C. 1, et seq. For purposes of this order, the court does not deem it necessary to rule on plaintiff's claimed violation of the Federal Safety Appliance Art.

The uncontroverted facts are simple: During the switching operation conducted at night, plaintiff was struck in the back of his head and shoulders by a long iron handle protruding downward and outward from

the open plug-type door of one of defendant's box cars being moved in the switching operation. By defendant's own rules the door should have been closed before the switching operation was ever commenced in which event the handle would not have protruded outwards in the manner that it did and plaintiff would not have been struck and injured.

The record discloses no negligence on the part of the plaintiff which in any way contributed to his injuries.

IT IS WHEREFORE ORDERED, ADJUDGED AND DECREED, that the Plaintiff's Motion for Partial Summary Judgement be, and the same is hereby granted; that there are no genuine issues of material fact; the negligence of the defendant is established as a matter of law and the only remaining issue for trial is the amount of damages sustained by plaintiff.

DATED thtis 30th day of November, 1973.

PAUL G. HATFIELD
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, CORDELL JOHNSON, Attorney for Respondent, hereby certify that three copies of the within and foregoing Brief for Respondent in Opposition were, with first class postage fully prepaid thereon, mailed, on the 17th day of December, 1975, to the following attorney of record:

JOHN C. HOYT
Attorney for Petitioner
320 First Avenue North
Great Falls, Montana 59403

CORDELL JOHNSON
Attorney for Respondent